"Article V.

I give, devise and bequeath unto Central Trust Company of Illinois, a corporation organized and existing under the laws of the State of Illinois, as Trustee, and to its successors in trust hereunder, all the rest, residue and remainder of my estate, of whatsoever kind and nature and wheresoever situated, belonging to me or to which I may be entitled at the time of my death, including any lapsed legacies (all of which is sometimes hereinafter referred to as my Residuary Trust Estate), upon the following trusts, that is to say:

Section 1. To divide said Residuary Trust Estate into two funds, one of which, to be known as Fund A, shall comprise two-thirds in value thereof, and the other of which, to be known as Fund B, shall comprise one-third in value thereof.

Section 2. To hold, manage and dispose of said Fund A for the following purposes and in the following manner, that is to say:

(a) To pay the net income of said Fund to my wife, Frances A. Redington, for and during her life, in equal monthly installments, and if such net income shall be less than Twenty Thousand Dollars ($20,000) in any one year to pay to her out of the principal of said Fund, if she shall request it, a sufficient sum to bring the payments to her in each year up to the sum of Twenty Thousand Dollars ($20,000).

(b) Upon the death of my wife, or upon my death if I should survive my wife, to pay to my daughter Ruth Redington Griswold, if living, the net income of said Fund A, in equal monthly installments ~~for and during~~ her life.

(c) Upon the death of the survivor of my said wife and daughter, or upon my death, leaving neither my said wife nor my said daughter me surviving, to set apart out of said Fund A two separate funds, each of the fair value in the judgment of said Trustee of One Hundred Thousand Dollars ($100,000), and to pay over, transfer and deliver one of said funds to Illinois Children's Home and Aid Society, a corporation of the State of Illinois, and the other of said funds to Chicago Commons Association, a corporation of the State of Illinois, both of said funds to be held by the respective corporations as

aforesaid, as endowments, the income of which shall be forever used for the support and maintenance of their respective institutions. I request that said bequest to said Illinois Children's Home and Aid Society be forever known and carried on the books and records of said Society as the Frances A. Redington Foundation. I request also that said bequest to said Chicago Commons Association shall forever carry the name of my sister Florence Redington Hayes on the books and records of said Association and be forever known as the Florence Redington Hayes Foundation.

After setting apart the two funds aforesaid, of the aggregate value of Two Hundred Thousand Dollars ($200,000), said Trustee shall pay over, transfer and deliver all the residue and remainder of said Fund A to The Young Women's Christian Association of Chicago, an Illinois corporation, to be by it forever kept separate and intact and to be forever known and carried on the books and records of said Association as the Frances A. Redington Foundation; provided, however, that if such residue and remainder of Fund A shall be sufficient, and the Board of Directors of said Association shall deem best, the said Association may, anything herein contained to the contrary notwithstanding, use the principal of
7 said bequest for or towards the purchase or erection of a building in the City of Chicago, to be used for carrying on the work of said Association, and in the event that the principal of said bequest shall be so used I request that any building so erected or purchased shall bear my wife's name.

Section 3. To hold, manage and dispose of said Fund B for the following purposes and in the following manner, that is to say:

(a) To pay the net income of said fund to my daughter, Ruth Redington Griswold, in equal monthly installments for and during her life.

(b) Upon the death of my said daughter after my death leaving heirs of the body her surviving, or upon my death if she shall have died in my lifetime leaving heirs of the body me surviving, to pay, deliver and convey the principal of said Fund B to such heirs of the body, share and share alike, division and distribution, however, to be made per stirpes and not per capita.

(c) Upon the death of my said daughter after my

death leaving no heirs of the body her surviving but leaving my wife Frances A. Redington her surviving, or upon my death if my said daughter shall have died in my lifetime leaving no heirs of the body me surviving but leaving my said wife me surviving, to pay the net income of said Fund B to my said wife in equal monthly installments, for and during her life.

(d) Upon the death of the survivor of my said wife and daughter leaving no heirs of the body of my said daughter surviving both of them, or upon my death leaving neither my said wife nor my said daughter nor any heirs of the body of my said daughter me surviving, to pay over, deliver and convey one-half in value of said Fund B to The Children's Memorial Hospital, a corporation of the State of Illinois, and one-half in value of said Fund B to Chicago Lying-In Hospital and Dispensary, a corporation of the State of Illinois, to be by them respectively held as endowments, the income thereof to be forever used for the support and maintenance of their respective institutions; provided, however, that if the fund given by this section to said Chicago Lying-In Hospital and Dispensary shall be sufficient, and if the Board of Directors of said corporation shall deem best, the principal of said bequest may, anything herein contained to the contrary notwithstanding, be used by said Chicago Lying-In Hospital and Dispensary for or towards the purchase or erection of a building in the City of Chicago to be used for carrying on the work of said corporation.

I request that said bequest to The Children's Memorial Hospital be forever known and carried on the books and records of said Hospital as the Ruth Redington Griswold Foundation."

"Article I.

I direct my Executors to pay all my just debts and funeral expenses and to pay out of the principal of my estate any and all valid taxes imposed by the United States Government or by the government of any State that may be assessed against my estate, or the interest of any beneficiary therein, and all such taxes, whether known as inheritance taxes, succession taxes or by any other name, shall be treated as expenses of administration chargeable against my estate generally, to be paid before my property is distributed."

The effect upon the computation of the residue of the Commissioner's deduction of inheritance taxes paid to the various states is as follows (no question being made by petitioners about the valuations of the assets in question):

	As found by Commissioner	As contended by Petitioners
Gross estate	$1,687,536.96	$1,687,536.96
Less charges and other deductions except state inheritance taxes paid out of estate	927,390.76	927,390.76
	760,146.20	760,146.20
State inheritance taxes paid out of residue	70,723.95	
Residue	689,422.25	760,146.20
Two-thirds of residue	459,674.83	506,764.13
Value of remainder (using the factor for two lives apparently used by the Commissioner, to-wit: .35202)	161,814.73	178,391.11 161,814.73
Amount which should be added to bequests to charity		16,576.38

10 (c) Under paragraph (a) of Section 2 of Article V of the will of decedent above quoted, if the payments from Fund A in any year shall be less than $20,000, the widow is entitled to receive a sufficient sum out of the principal to bring the payments to her up to $20,000. The present investments held in Fund A produce more than $20,000 a year; but even if they did not, the bequest of the remainder to the charities is a vested remainder under the laws of Illinois subject only to be divested upon the happening of contingencies in the future. At the date of death, therefore, the charities had a fully vested remainder. The Commissioner nevertheless decreased the value of the remainder on account of this contingency. The factor used by the Commissioner in computing the value of the remainder after joint lives where there was a limited right to invade the principal appears to have been .35202. The factor used for a remainder to the survivor of the same two life estates under the

trust created by Article IV of the will where there was no limited right to invade the principal was .36484. This difference, .01282, must represent the amount deducted by the Commissioner on account of the limited right of the widow to invade the principal; which factor as applied to the residue as found by the Commissioner improperly decreases the amount of charitable bequests by $2,074.46; and as applied to the amount of the residue as contended for by the petitioners decreases the gift to charity by $2,286.97.

11 (d) The Commissioner apparently allowed as deductions for charity, not the value of the fund after subtracting life estates computed according to his published tables, but a smaller amount based upon the values of "reversions" computed under said tables. In all cases but one under the will of decedent the remainder going to charity is subject to two life estates and, as no tables for the valuation of two life estates are published by the Commissioner it is not possible to state the exact effect of the Commissioner's use of "reversion" values as to said remainders. In the case of the fund created by Article II, Section 2, of the will of decedent, there is a remainder to charity after the life estate of Emma K. Hiatt, who was born February 24, 1881, and was more than 42½ years old at the date of the death of decedent. The value of her life estate in $25,000 according to the tables contained in Article 15 of Regulations 63 was $14,621.22, and the value of the remainder going to charity was therefore $10,378.78. The Commissioner, computing the value of the remainder under the portion of said tables providing for the value of a reversion, allowed only $10,217.75 for the gift to charity. Presumably the same course was followed in the computation in all the gifts to charity. If the Commissioner did compute all said gifts to charity on the basis of reversions, instead of on the basis of the gross bequest after deducting the life estate, and if the same factor of errors runs through them all, the charitable bequests would be in-

12 creased by about $6,000 from the amount assessed by him and the total tax upon the estate decreased accordingly.

6. The petitioners prav for relief from the deficiency asserted by the respondent in the following and each of the following particulars:

(a) That the total net estate be decreased by $90,000, the value of the property jointly owned by decedent and his wife;

(b) That the value of the gifts to charity be redetermined

in accordance with the contentions of the petitioners under items 4-(b), 4-(c) and 4-(d) above stated.

Wherefore the petitioners pray that this Board may hear and redetermine the deficiency herein alleged.

HAROLD T. GRISWOLD,
W. W. S. CARPENTER,
LAIRD BELL,
Executors of the Estate of William H. Redington, deceased.

LAIRD BELL,
DARRELL S. BOYD,
THOMAS L. MARSHALL,
Counsel for Petitioners,
134 South La Salle Street,
Chicago, Illinois.

13 State of Illinois } ss.
County of Cook }

HAROLD T. GRISWOLD, WILLIAM W. S. CARPENTER and LAIRD BELL, being duly sworn, each for himself says:

That he is one of the petitioners above named, that he has read the foregoing petition and is familiar with the statements contained therein, and that the facts stated are true.

HAROLD T. GRISWOLD,
WILLIAM W. S. CARPENTER,
LAIRD BELL.

Subscribed and sworn to before me this 14th day of December, 1926.

FREDERICK C. E. LUNDGREN,
Notary Public.

(Notarial Seal)

14 EXHIBIT A.

MT-ET-C1-4659-OJV
District of 1st Illinois
Estate of William H. Redington
Date of death October 8, 1923
Deficiency Tax $11,273.06

Harold T. Griswold et al., Executors,
Estate of William H. Redington,
846 West Congress Street,
Chicago, Illinois.

Sirs:

The Bureau has examined the protest, filed by you as executors of the above named estate, against the tentative findings as set forth in letter directed to you under date of October 30, 1925.

In view of the evidence now of record and the protest arising in connection with the following items, adjustments are made as herein indicated:

Stocks and Bonds	Returned	Tentatively Determined	Determined
Item 1,	$10,050.00	$10,500.00	$10,500.00
Item 2,	4,500.00	4,750.00	4,500.00
Item 11,	4,500.00	4,750.00	4,500.00
Item 27,	9,661.00	10,000.00	9,661.00
Item 38,	20,203.50	20,720.00	20,195.00
Item 40,	19,368.00	20,200.00	19,368.00
Item 42,	20,500.00	20,783.20	20,500.00
Item 47,	6,400.00	6,850.00	6,400.00
Item 51,	8,820.00	9,540.00	8,820.00

15 Your protest in respect to jointly owned property is rejected for the reason that the wife contributed no part of the funds to make the original purchase.

Your protest in respect to deductions on account of charitable bequests is rejected for the reason that the amount allowed in the tentative audit was computed in accordance with the law and regulations.

In view of the foregoing, the gross estate is reduced from $1,691,636.16 as tentatively determined, to $1,687,536.96; the deductions remain as tentatively determined at $509,675.98,

and the net estate is reduced from $1,181,960.18 as tentatively determined to $1,177,860.98, the tax upon the transfer Feb. 15. which is $69,286.10. The return on Form 706 shows a tax of $58,013.04. The deficiency is, therefore, $11,273.06.

The records of this office show that the tax shown by the return was paid October 8, 1924.

Pursuant to Section 318 of the Revenue Act of 1926, notice of deficiency, amounting to $11,273.06, in estate tax with respect to the estate of William H. Redington, is hereby given, with a view to the assessment and collection thereof. Any portion of the amount so assessed, not paid within thirty days from the date of notice and demand from the Collector, will bear interest at the rate of one per centum per month from the date of such notice and demand, unless an extension should be granted.

Within sixty days (not counting Sunday as the six-
16 tieth day) after the mailing of this notice, you may, in accordance with the provisions of Section 308 of the Revenue Act of 1926, file a petition with the Board of Tax Appeals for a redetermination of the deficiency. The address of the Board is, United States Board of Tax Appeals, Earle Building, 13th & E Streets, Northwest, Washington, D. C.

No claim in abatement of any deficiency which may be assessed in this case will be entertained.

If you acquiesce in this determination, either in whole or in part, you are requested to sign the enclosed waiver of restrictions on the assessment and collection of so much of the deficiency as results from the adjustments in which you acquiesce and forward it to the Commissioner of Internal Revenue, Washington, D. C., marked for the attention of the Estate Tax Division, Miscellaneous Tax Unit.

Respectfully,

(Signed) D. H. Blair,
Commissioner.

Enclosures
aho

17 UNITED STATES BOARD OF TAX APPEALS.

Harold T. Griswold, W. W. S. Carpenter and Laird Bell, Executors, Estate of William H. Redington, Chicago, Ill.,
Petitioners,
vs.
Commissioner of Internal Revenue,
Respondent
} Docket No. 21942.

ANSWER.

Filed Feb 15 1927.

The Commissioner of Internal Revenue by his attorney, A. W. Gregg, General Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer admits and denies as follows:

1. Admits the allegations set forth in paragraph of the petition numbered 1.

2. Admits the allegations set forth in paragraph of the petition numbered 2.

3. Admits the allegations set forth in paragraph of the petition numbered 3.

4. Denies that the determination of the deficiency tax is based upon errors as alleged in the paragraph of the petition numbered 4.

5 (a). Admits the allegations set forth in subrapagraph (a) of the paragraph of the petition numbered 5.

18 5 (b). Admits the allegations set forth in subparagraph (b) of the paragraph of the petition numbered 5 except so much thereof as alleges that the Commissioner's computation of the residue of the decedent's estate is as alleged in said subparagraph on page 8 thereof, and specifically denies said allegation.

5 (c) and (d). Denies the allegations set forth in subparagraphs (c) and (d) of the paragraph of the petition numbered 5.

6. Denies generally and specifically each and every other allegation contained in the petition of this taxpayer not hereinbefore expressly admitted or denied.

Wherefore, it is respectfully prayed that the determination of the Commissioner be approved.

A. W. GREGG,
General Counsel,
Attorney for the Commissioner of Internal Revenue.

Of Counsel:
J. F. GREANEY,
Special Attorney,
Bureau of Internal Revenue.

19 UNITED STATES BOARD OF TAX APPEALS.

Harold T. Griswold, W. W. S. Carpenter and Laird Bell, Executors, of the Estate of William H Redington, Deceased,
Petitioners,
vs.
Commissioner of Internal Revenue,
Respondent
} Docket No. 21942.

STIPULATION.

Filed Jan 28 1931.

It is hereby stipulated and agreed, by and between the parties to the above-entitled case, through their respective counsel, as follows:

(1) That William H. Redington, the decedent in the above-entitled case, died a resident of Evanston, Illinois, on October 8, 1923, and was survived by his wife Frances A. Redington.

(2) That on or about October 5, 1909, the decedent, being the owner thereof, conveyed through an intermediary to himself and his wife, Frances A. Redington, as joint tenants and not as tenants in common, certain real estate situated in Evanston, Illinois, and used by him and his wife as a homestead; that title to said property vested upon delivery of said deed in the decedent and his wife as such joint tenants with the right of survivorship under the laws of Illinois; that Frances A. Redington made no contribution at any time to the cost of the said real estate and that the said real estate

is the same property valued by the respondent at $90,000 and included in the gross estate by the respondent as subject to the Federal Estate tax referred to in paragraph 4, subdivision (a) and paragraph 5, subdivision (a) of the petition filed in this case.

20 (3) That the petitioner does not question the value of $90,000 placed upon this property by the respondent in determining the deficiency, the only question raised with reference to the respondent's action in this connection being whether any part or all of the value of said jointly owned property is subject to the Federal Estate tax.

(4) That the issues raised in the petition in subdivisions (b), (c), and (d) of paragraph 4 are expressly waived and abandoned by the petitioner for the reason that an agreement has been reached with the respondent with reference thereto and such agreement is given effect in the paragraphs immediately following in this stipulation.

(5) That if the Board sustains the respondent's action in this case in including for purposes of the Federal Estate tax the entire value of the jointly owned property, then the deficiency in the estate tax in this case is $9,736.55.

(6) That if the Board sustains the petitioner's contentions and holds that no part of the value of the said jointly owned property is subject to the Federal Estate tax, then the deficiency in the estate tax in this case is $736.55.

(7) That if the Board decides that only one-half of the value of the jointly owned property is subject to the Federal Estate tax in this case, then the deficiency in the estate tax is $5,236.55.

21 (8) It is understood and agreed between the parties that the stitpulations hereby entered into shall not be construed or held as having the effect of waiving any rights to take appropriate preceedings to contest the correctness of any decision that may be rendered by the Board of Tax Appeals in this case.

(Sgd) LAIRD BELL
Counsel for Petitioner.

(Signed) C. M. CHARSET
General Counsel,
Bureau of Internal Revenue,
Attorney for Respondent.

22 (Caption)

Promulgated June 9, 1931.

An estate of joint tenancy in Illinois real estate was created in 1909 between the decedent and his wife. The decedent died in 1923. Held that only one-half of the value of such property is to be included in the gross estate of the decedent for the purpose of the estate tax. *Mary Allen Emery, Executrix,* 21 B. T. A. 1038, followed.

Laird Bell, Esq., and Stiles W. Burr, Esq., for the petitioners.

R. F. Staubley, Esq., for the respondent.

This proceeding is for the redetermination of a deficiency in estate tax of $11,273.06. In a stipulation filed by the parties the petitioners, as the result of an agreement reached by them and the respondent, abandoned all the issues raised in the petition except one, namely, the correctness of the respondent's action in including in the gross estate of the decedent the amount of $90,000 representing the entire value of real estate held, at the time of the decedent's death, by him and his wife as joint tenants with the right of survivorship under deed dated and delivered October 5, 1909. The case was submitted on stipulation from which we make the following:

23 FINDINGS OF FACT.

William H. Redington died a resident of Evanston, Illinois, on October 8, 1923 and was survived by his wife Frances A. Redington.

On or about October 5, 1909, the decedent, being the owner thereof, conveyed through an intermediary to himself and his wife, Frances A. Redington, as joint tenants and not as tenants in common, certain real estate situated in Evanston, Illinois, and used by him and his wife as a homestead. Title to the property vested, upon delivery of the deed, in the decedent and his wife as joint tenants with the right of survivorship under the laws of Illinois. Frances A. Redington made no contribution at any time to the cost of the said real estate. The said real estate was valued by the respondent at $90,000 and was included by him in the decedent's gross estate as subject to tax.

OPINION.

Trammell: The petitioners do not question the value of $90,000 placed by the respondent on the property held jointly but contend that under the Revenue Act of 1921 no part of such property it to be included in the decedent's taxable estate.

With respect to the inclusion in the gross estate of property held jointly section 402 of the Revenue Act of 1921 provides as follows:

> That the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—
>
> * * * * * * *
>
> (d) To the extent of the interest therein held jointly or as tenants in the entirety by the decedent and any other person, or deposited in banks or other institutions in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to
> 24 have been received or acquired by the latter from the decedent for less than a fair consideration in money or money's worth; *Provided,* that where such property or any part thereof, or part of the consideration with which such property was acquired, is shown to have been at any time acquired by such other person from the decedent for less than a fair consideration in money or money's worth, there shall be excepted only such part of the value of such property as is proportionate to the consideration furnished by such other person; *Provided further,* That where any property has been acquired by gift, bequest, devise, or inheritance, as a tenancy in the entirety by the decedent and spouse, or where so acquired by the decedent and any other person as joint tenants and their interests are not otherwise specified or fixed by law, then to the extent of one-half of the value thereof

In *Mary Allen Emery, Executrix,* 21 B T. A. 1038, we had occasion to construe the above quoted provisions of section 402 in connection with facts similar to those in the instant case. In the *Emery* case certain other parties on April 1,

1920 conveyed by deed certain real estate situated in Illinois, to John T. Emery, and his wife, Mary Allen Emery, in joint tenancy. Thereafter on December 25, 1921 Emery died. In determining a deficiency in estate tax against Emery's estate the respondent included in the gross estate the full value of the property held in joint tenancy. We found that in Illinois the common law conception of joint tenancy prevails and that each joint tenant has a legal right of severance which may be exercised at any time by either tenant prior to his death and thereby defeat the rights of the survivor in the interest of the other joint tenant. We accordingly concluded that under the decision in *Tyler* v. *United States,* 281 U. S. 497 the death of Emery resulted in the "enlargement of property rights" to his wife in a sense which required the inclusion in the gross estate of the decedent of at least one-half of the value of the property held jointly by him and his wife at the time of his death.

25 We also considered the question as to whether the other one-half of the property held in joint tenancy which had vested in the survivor upon the creation of the joint tenancy and as to which a right of severance existed on the part of the survivor could be included in the gross estate of the decedent when such tenancy was created prior to the enactment of the applicable act under which the estate tax was being imposed. In connection with this question we considered and relied on the decision in *Knox* v. *MsElligott,* 258 U. S. 546 wherein was involved section 202 (c) of the Revenue Act of 1916, as amended by the Revenue Act of 1917, in which the provision with respect to the taxation of joint property, in so far as material, was not unlike that contained in the above-quoted provisions of section 402. The joint tenancy involved in *Knox* v. *McElligott* was created prior to the effective date of the applicable act. The court held that the statute could not be given a retroactive effect, and that one-half of the jointly owned property which vested in the survivor upon creation of the joint tenancy and as to which a right of severance existed on the part of the survivor throughout the existence of the joint tenancy should not be included in the gross estate of the decedent for estate tax purposes. In the case of *Schwab* v. *Doyle,* 258 U. S. 529 the court considered the retroactive application of a somewhat similar statute and held that it was not retroactive. Upon the authority of these decisions we held in the *Emery* case that since the joint tenancy of Emery and his wife was

created prior to the enactment of the act in effect when he died and since such act was not made specifically retroactive, only one-half of the property held jointly by them should be included in the gross estate subject to the estate tax.

26 The petitioner concedes the similarity of the facts in the instant case to those in the *Emery* case and that our decision in that case is contrary to their contention that no part of the value of the property held jointly by Redington and his wife at the time of his death is to be included in the gross estate subject to tax. They insist, however, that our construction of the above-quoted provisions of section 402 in connection with the decisions in *Schwab* v. *Doyle, supra, Knox* v. *McElligott, supra* and similar cases is in error in that it holds that one-half of the value of the property held jointly is to be included in the gross estate subject to tax notwithstanding the fact that decedent's interest in such property was created prior to the effective date of the act under which it is taxed.

While in our decision in the *Emery* case we did not specifically discuss the question of retroactivity in reaching the conclusion that one-half of the value of the property held jointly was to be included in the gross estate subject to tax we think that in view of the reasoning of the court in *Tyler* v. *United States, supra,* and upon which our decision was based, it is immaterial in so far as one half interest is concerned whether the interest of the decedent be created before or after the enactment of the act in effect at the time of his death. In the *Tyler* case the court said that the question is "whether the death has brought into being or ripened

27 for the survivor property rights of such character as to make appropriate the imposition of a tax". While the *Tyler* case involved estates by the entirety the principle there enunciated is equally applicable here with respect to one half interest. Prior to the death of the decedent in the instant case he had a legal right of severance which he could have exercised at any time prior to his death and could have thereby defeated the right of the survivor, his wife, in his interest in the property. He could have conveyed his share and his wife could have conveyed hers. *Lawler* v. *Byrne,* 252 Ill. 194, 96 N. E. 892; *Szymczak* v. *Szymczak,* 206 Ill. 541, 138 N. E. 218. Either husband or wife could have mortgaged his or her interest or subjected it to a mechanic's lien. *Hardin* v. *Wolf,* 318 Ill. 48, 148 N. E. 868. Either party could have brought suit for partition. *Barr* v. *Barr,* 273 Ill. 621, 113 N. E. 36. Each joint tenant was entitled to half the rents

and profits *Barr* v. *Barr, supra.* The decedent's death extinguished those substantial rights and resulted in the entire interest in his property, property rights and benefits not theretofore owned, being vested in the survivor. We therefore think that the date on which the interest of the deceased joint tenant was created is not material, in so far as one half interest, that owned and seized by the decedent is concerned, since his right and interest in the property was not transferred or released to the survivor until his death, see *Ada M. Slocum, Executrix,* 21 B. T. A. 169, but that such half of the joint tenancy should be included in the gross estate. *Mary Allen Emery, supra.*

With respect to the interest owned by the wife in the joint tenancy, the case at bar is even stronger than the *Emery*
28 case. In this case the joint tenancy was created in 1909 before the enactment of any legislation which imposed a tax upon estates of any character. In the *Emery* case the joint tenancy was created in 1920. We think that this interest having been created prior to any taxing statute is not subject to the estate tax under the 1921 Act.

The parties having stipulated that if we hold that only one-half of the value of the jointly owned property is to be included in the decedent's gross estate subject to tax the amount of the deficiency is $5,236.55. Accordingly,

Judgment will be entered determining a deficiency of $5,236.55.

29 * * (Caption) * * Entered 1931.

DECISION.

Pursuant to the determination of the Board, as set forth in its report promulgated June 9, 1931, it is

Ordered and Decided: That there is a deficiency in estate tax of $5,236.55.

Entered Jun 11 1931.

Enter:

(Signed) LOGAN MORRIS,
Member.

A True Copy.

Teste:

B. D. GAMBLE,
Clerk U. S. Board of Tax Appeals.

(Seal)

Nov. 17, 31. 30 * * (Caption) * *

PETITION FOR REVIEW.

Filed Nov. 17, 1931.

To the Honorable the Judges of the United States Circuit Court of Appeals for the Seventh Circuit:

Your petitioners, Harold T. Griswold, W. W. S. Carpenter and Laird Bell, Executors of the Estate of William H. Redington, deceased, respectfully represents as follows:

I.

Jurisdiction for review.

This is a proceeding for review by the United States Circuit Court of Appeals for the Seventh Circuit, of a decision of the United States Board of Tax Appeals entered on the 11th day of June, 1931, redetermining a deficiency in estate tax against the Estate of William H. Redington, deceased, in the amount of $5,236.55.

31 Your petitioners are the duly appointed and qualified executors of the said estate. All of them are and have been for a considerable time prior to the filing of this petition, citizens and inhabitants of the United States and of the State of Illinois. The address of your petitioners is 846 West Congress Street, Chicago, Illinois.

II.

Nature of Controversy.

The question before the Board of Tax Appeals was whether any portion of property held at the time of the decedent's death, by the decedent and his wife as joint tenants under a deed executed in 1909, should be included in the decedent's gross estate.

The decedent died a resident of Evanston, Illinois on October 8, 1923, and was survived by his wife, Frances A. Redington. The Revenue Act of 1921 was then in force. On or about October 5, 1909, the decedent, being the owner thereof, conveyed, through an intermediary, to himself and

his wife, Frances A. Redington, as joint tenants, certain real estate situated in Evanston, Illinois and used by him and his wife as a homestead. Title to the property vested upon delivery of the deed, in the decedent and his wife as joint tenants with the right of survivorship under the laws of Illinois. Frances A. Redington made no contribution at any time to the cost of said real estate. The said real estate
32 was valued by the Commissioner of Internal Revenue at $90,000, and was included by him in the decedent's gross estate as subject to tax.

On appeal to the Board of Tax Appeals the above facts were stipulated by the parties and were found by the Board. The Board held that one-half of the value of the said real estate should be included in the decedent's gross estate, and redetermined the deficiency accordingly. The sole question here is whether the action of the Board in so holding is correct.

III.

Assignments of Error.

Your petitioners further show that they are aggrieved by the action of the Board of Tax Appeals and injured thereby, and that the errors complained of are as follows:

1. The said Board erred in holding that any portion of the value of the real estate above mentioned should be included in the decedent's gross estate subject to tax.

2. The said Board erred in not holding that no portion of the value of the said real estate should be included in the decedent's gross estate subject to tax.

3. The said Board erred in construing Section 402(d) of the Rvenue Act of 1921 so as to require the inclusion in the decedent's gross estate of any portion of the said real estate.

33 4. The said Board erred in redetermining the deficiency at $5,236.55 and in not redetermining it at $736.55 (which is the agreed amount of the deficiency in case the value of the said real estate is excluded from the gross estate).

Wherefore, your petitioners pray that this court may review the decision of the United States Board of Tax Appeals in this cause, directing the said Board to redetermine the deficiency by not including any portion of the value of the said real estate in the decedent's gross estate which is

subject to tax; and that this court may grant such other and further relief as may appear proper in the premises.

DARRELL S. BOYD
THOMAS L. MARSHALL
STILES W. BURR
Attorneys for Petitioners
134 South La Salle Street,
Chicago, Illinois.

34 State of Illinois }
County of Cook } ss.

DARRELL S. BOYD, being duly sworn, on oath deposes and says that he is one of the attorneys of record for the petitioners named in the foregoing petition; that the said petition was prepared under his supervision; that he is familiar with the contents thereof; that the allegations of fact contained therein are true to the best of his knowledge, information, and belief; that the said petition is not filed for purposes of delay; and that he believes the petitioners are justly entitled to the relief sought.

DARRELL S. BOYD

Subscribed and sworn to before me, this 13th day of November, 1931.

WM. N. HADDAD
(Seal) *Notary Public.*

* * (Caption) * *

Filed Nov 17 1928.

NOTICE.

To: C. M. Charest, Esq., General Counsel Bureau of Internal Revenue, Attorney for Respondent.

You Are Hereby Notified that a Petition for Review in the above entitled cause was filed with the United States Board of Tax Appeals on the 17th day of November, 1931.

A copy of said petition is served upon you herewith.

DARRELL S. BOYD
THOMAS L. MARSHALL
STILES W. BURR
Attorneys for Petitioners,
134 South LaSalle Street,
Chicago, Illinois.

Service of the foregoing notice and a copy of the petition therein referred to is hereby accepted this 17th day of November, 1931.

C. M. CHAREST
General Counsel, Bureau of Internal Revenue, Attorney for Respondent.

36 * * * (Caption) * *

PRAECIPE FOR TRANSCRIPT.

Filed Dec 2 1931.

To the Clerk of the United States Board of Tax Appeals:

Please prepare a transcript of record in this cause and on or before December 11, 1931, transmit the same to the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit at Chicago, Illinois, and include in said transcript copies duly certified as correct, of the following documents:

1. The docket entries of proceedings before the Board in the above entitled cause.
2. Petition filed December 16, 1926.
3. Respondent's answer filed February 15, 1927.
4. Stipulation of facts filed on or about January 28, 1931.
5. Findings of fact and opinion of the Board promulgated June 9, 1931.
6. Order of redetermination entered on June 11, 1931.

37 7. Petition for review filed November 1931.
8. This praecipe for transcript.
9. Notice of filing of petition for review and acknowledgment of service.

DARRELL S. BOYD
Attorney for Petitioners.

AGREEMENT TO PRAECIPE.

We hereby agree that the above and foregoing praecipe is correct; that the records, documents, papers and proceedings therein set forth are sufficient for a complete record in this cause on appeal; and we hereby adopt the foregoing as a list designated by each of the parties to this cause to complete said transcript; and we hereby waive the issuance and service of notice upon any party hereto, and agree that said praecipe shall be obeyed and acted upon by the clerk as fully and to all intents and purposes in the same manner as if said praecipe had been regularly filed and a true copy thereof had been served upon each party hereto.

DARRELL S. BOYD
Attorney for Petitioners
C. M. CHAREST
General Counsel, Bureau of Internal Revenue, Attorney for Respondent.

38 • • (Caption) • •

CERTIFICATE.

I, B. D. Gamble, Clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages 1 to 37, inclusive, contain and are a true copy of the transcript of record, papers and proceedings on file and of record in my office as called for by the Praecipe in the appeal as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 22nd day of December A. D. 1931.

B. D. GAMBLE
Clerk.

(Seal)

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 24, inclusive, contain a true copy of the printed record, printed under my supervision and filed on the 23rd day of January, 1932, on which the following entitled cause was heard and determined:

Harold T. Griswold, *et al.*,
Petitioners,

vs.

Commissioner of Internal Revenue,
Respondent,

No. 4719, October Term, 1932, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 6th day of April, A. D. 1933.

(Seal)

FREDERICK G. CAMPBELL,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held in the United States Court Room in the City of Chicago in said Seventh Circuit on the sixth day of October, 1931, of the October Term in the year of our Lord one thousand Nine Hundred and thirty-one and of our Independence the one hundred and fifty-sixth.

Harold T. Griswold, W. W. S. Carpenter and Laird Bell, Executors of the Estate of William H. Redington, Deceased
4719 *vs.*
Commissioner of Internal Revenue.

Petition for Review of Order of the United States Board of Tax Appeals.

And on the fifth day of January, 1932, there was filed in the office of the Clerk of this Court an appearance of counsel for petitioner, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 4719. October Term, 1932.

Harold T. Griswold, *et al.*,
Petitioner,

vs.

Commissioner of Internal Revenue,
Respondent.

The Clerk will enter my appearance as counsel for the Petitioner.

DANIEL S. BOYD,
THOMAS L. MARSHALL,
134 S. La Salle St.,
Chicago, Ill.
STILES W. BURR,
Willard Hotel,
Washington, D. C.

Endorsed: Filed January 5, 1932. Frederick G. Campbell, Clerk.

And on the same day, to-wit: On the fifth day of January, 1932, there was filed in the office of the Clerk of this court an appearance of counsel for respondent, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 4719. October Term, 1932.

Harold T. Griswold, W. W. S. Carpenter and Laird Bell, Executors of the Estate of W. H. Redington,

vs.

Commissioner of Internal Revenue.

The Clerk will enter my appearance as counsel for the respondent.

G. A. YOUNGQUIST,
C. M. CHAREST,
DWIGHT H. GREEN.

Endorsed: Filed January 5, 1932. Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the twenty-third day of March, 1932, the following further proceedings were had and entered of record, to-wit:

Wednesday, March 23, 1932.

Court met pursuant to adjournment and was opened by proclamation.

Present:

Hon. Samuel Alschuler, Circuit Judge, presiding.
Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Frederick G. Campbell, Clerk.
Henry C. W. Laubenheimer, Marshal.

Before:

Hon. William M. Sparks, Circuit Judge.

Harold T. Griswold, *et al.*,
4719 *vs.*
Commissioner of Internal Revenue.

Petition for Review of Order of the United States Board of Tax Appeals.

It is now here ordered that this cause be heard with cause number 4699—Commissioner of Internal Revenue *vs.* Mary Allen Emery, Executrix, etc.

And afterwards, to-wit: On the twelfth day of April, 1932, the following further proceedings were had and entered of record, to-wit:

Tuesday, April 12, 1932.

Court met pursuant to adjournment and was opened by proclamation.

Present:

Hon. Samuel Alschuler, Circuit Judge, presiding.
Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Frederick G. Campbell, Clerk.
Henry C. W. Laubenheimer, Marshal.

Harold T. Griswold, *et al.*,
4719 *vs.*
Commissioner of Internal Revenue.

Petition for Review of Order of the United States Board of Tax Appeals.

It is ordered by the court that this cause be, and the same is hereby set down for hearing on May 6, 1932.

And afterwards, to-wit: On the sixth day of May, 1932, the following further proceedings were had and entered of record, to-wit:

Friday, May 6, 1932.

Court met pursuant to adjournment and was opened by proclamation.

Present:

Hon. Samuel Alschuler, Circuit Judge, presiding.
Hon. William M. Sparks, Circuit Judge.
Hon. James H. Wilkerson, District Judge.
Frederick G. Campbell, Clerk.
Henry C. W. Laubenheimer, Marshal.

Harold T. Griswold, *et al.*,
4719 *vs.*
Commissioner of Internal Revenue.
} Petition for Review of Order of the United States Board of Tax Appeals.

Now this day come the parties by their counsel and this cause now comes on to be heard on the printed record and briefs of counsel and on oral arguments by Mr. W. N. Haddad, counsel for petitioner, and by Mr. William Cutler Thompson, counsel for respondent, and the court having heard the same takes this matter under advisement.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit begun and held in the United States Court Room in the City of Chicago, in said Seventh Circuit on the fourth day of October, 1932, of the October Term in the year of our Lord One Thousand Nine Hundred and Thirty-two, and of our Independence the One Hundred and Fifty-seventh.

And afterwards, to-wit: On the twenty-sixth day of November, 1932, there was filed in the office of the Clerk of this court the opinion of the court, which said opinion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term and Session, 1932.

Commissioner of Internal Revenue,
Petitioner,
No. 4699. *vs.*
Mary Allen Emery, Executrix of the Estate of John T. Emery,
Respondent.

Harold T. Griswold *et al.*, Executors of the Estate of William H. Redington, Deceased,
Petitioners,
No. 4719. *vs.*
Commissioner of Internal Revenue,
Respondent.

Petitions for Review of Decisions of the United States Board of Tax Appeals.

November 26, 1932.

Before ALSCHULER and SPARKS, *Circuit Judges,* and WILKERSON, *District Judge.*

ALSCHULER, *Circuit Judge.* (No. 4699, *re* Emery.) Petitioner seeks review of an order of redetermination of a deficiency in the estate tax of John T. Emery, deceased.

Decedent, a resident of Illinois, died December 25, 1921.

April 21, 1920, the Illinois real estate here in question was deeded by the grantors to the decedent and Mary Allen Emery, his wife, "not in tenancy in common, but in joint tenancy." It does not appear that prior to the conveyance the wife had any title or ownership in the real estate, or that she made any contribution to its purchase.

It is not important whether the estate thus created be denominated a joint tenancy or a tenancy by the entirety; both are included in the taxing statute, and any distinction between them is not here material. For convenience we herein call it joint tenancy.

Respondent, the wife and executrix of decedent, included in her return of decedent's property for federal estate tax purposes one-half of the total value of $65,000 of this real estate. Petitioner maintains that the entire value of the property was includable in the gross estate of decedent. The Board of Tax Appeals found against petitioner's contention, declining to require the other one-half to be included in the return. The only question is as to the correctness of the Board's conclusion.

Decedent's death occurred while the Revenue Act of 1921 was in force, and the Board held that one-half of the estate granted by the joint tenancy deed of 1920 having been, by the terms of that deed, vested in the joint tenant Mary Allen Emery, now to tax the vested estate under the Revenue Act of 1921 would be giving to that statute retroactive effect, which would be contrary to the holding of the Supreme Court in *Knox* v. *McElligott*, 258 U. S. 546.

This case dealt with a situation where the joint tenancy in husband and wife was created in 1912, at the time when there was no federal estate tax. The death of one of the joint tenants occurred in 1917, while the Revenue Act of 1916, creating an estate tax, was in force. This Act provided:

> "SEC. 201. That a tax (hereinafter in this title referred to as the tax), equal to the following percentages of the value of the net estate, to be determined as provided in section two hundred and three, is hereby imposed upon the transfer of the net estate of every decedent dying after the passage of this Act, whether a resident or nonresident of the United States: * * *
>
> "SEC. 202. That the value of the gross estate of the decedent shall be determined by including the value at the

time of his death of all property, real or personal, tangible or intangible, wherever situated: * * *

"(c) To the extent of the interest therein held jointly or as tenants in the entirety by the decedent and any other person, or deposited in banks or other institutions in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have belonged to the decedent."

The Knox case holds that to tax the entire joint estate as property of the decedent would be in effect taxing the half which before the act was passed had vested in the wife, and would be giving the 1916 Act a retroactive effect, which would be unconstitutional, citing as basis for its opinion the decision in *Shwab* v. *Doyle*, 258 U. S. 529, decided about the same time.

If the joint tenancy here in question had been created before the 1916 statute, we would have the same situation as in the Knox case. When, however, the joint tenancy here was created there was in force the Revenue Act of 1918, in which there were enacted [Sec. 402(d)] the same provisions respecting taxation of joint tenancies and estates by the entirety as provided in the 1916 Act. If, therefore, the death had occurred while the 1918 Act was in force, unquestionably the estate tax on the entire joint property, as fixed in the 1918 Act, would have had application. In such case it could not be said that the estate was created and became vested without contemplation of the provisions of the statute, as pointed out in *Tyler* v. *United States*, 281 U. S. 497, and *Phillips* v. *Dime Trust and S. D. Co.*, 284 U. S. 160.

But it happens that the provisions of the 1918 Revenue law in this respect are identical with those of the Revenue law of 1921. Can it in such case be said that this joint tenancy was created without regard to or without contemplation of the statutory provision for the levying of the estate tax upon the whole joint estate, when upon the death of one of the joint tenants the survivor succeeds to the entire estate?

It is well recognized in statutory construction that where the provisions of an existing statute are repeated and carried into the succeeding statute, rights and liabilities accruing under the former are preserved by the latter notwithstanding the latter makes provisions for repeal of the former without

incorporating a saving clause. *Pacific Mail Steamship Co.* v. *Joliffe,* 2 Wall. 450; *Bear Lake & River Water Works & Irrig. Co.* v. *Garland,* 164 U. S. 1, 11 *et seq.; Goublin* v. *United States,* 261 Fed. 5, 10 (C. C. A. 9), and cases and authority therein cited.

We see no reason why this principle is not here applicable. Some years before the estate in question was created the government had declared its policy of imposing such a tax, and at no time since has it receded from that policy. Declared by the 1916 Act, it has ever since remained in substantially the same form, the Acts of 1918 and 1921 not changing the policy but merely carrying it forward. The Act of 1921 did not impose a new burden not contemplated at the time the estate was created, as was the situation in the Knox case.

In *Klein* v. *United States,* 283 U. S. 231, arising under the 1918 Act, the court recognized this principle, saying:

> "The provision of the Revenue Act of 1918, so far as it seeks to tax the transfer in question, is assailed as unconstitutional because, it is said, the transfer was complete and irrevocable before the act was passed. * * But the deed under review, while made before the enactment of the Revenue Act of 1918, was made after the Act of 1916, * * which, with an addition not pertinent here, contained (Sec. 202) exactly the same provision; and the contention, for that reason, other grounds aside, is without merit."

In *Milliken* v. *United States,* 283 U. S. 15, where the statute was being interpreted as applicable to a gift, as in the Klein case, the court, after concluding that a tax is not necessarily and certainly arbitrary, and therefore not invalid because retroactively applied, said at p. 22:

> "Hence, in challenging the present tax it does not suffice to say that the gift antedated the statute (1918). It is necessary to consider the nature of the tax and of the decedent's gift. When the gift was made it was subject to the provisions of the 1916 Revenue Act. By it, Congress had adopted the well understood system of taxation of transfers of property at death, already in force in forty-two states. * * A characteristic feature of the system was that incorporated in Sections 202 (b) of the 1916 Act and 402 (c) of the 1918 Act, both of which im-

posed a tax on gifts made in contemplation of death, computed at the same value and rate as though the property given had been a part of the donor's estate passing at death.

* * * * * *

The present gift was subject to the excise when made; and for reasons already indicated, we think a mere increase in the tax, pursuant to a policy of which the donor was forewarned at the time he elected to exercise the privilege, did not change its character."

We conclude that the entire estate created by this transfer in joint tenancy was taxable, and the order of the Board of Tax Appeals is reversed, and the cause is remanded to the Board with direction to redetermine the tax accordingly.

(No. 4719, *re* Griswold *et al.*) In this case the facts are in all material respects like those in No. 4699, except that the joint tenancy (or tenancy by the entirety) in the deceased and his wife was created in 1909. After the death in 1923 of the husband tenant, petitioners, as his executors, in their return for federal estate tax, did not include any of the value of this joint property which deceased in his lifetime thus held jointly with his surviving wife, to whom no part of the property ever originally belonged.

The Commissioner redetermined the tax on the basis that the entire value of the joint property was taxable. On appeal the Board of Tax Appeals determined that one-half was taxable, and both petitioner and Commissioner sought review. The latter appeal has since been dismissed on motion of the Commissioner.

Petitioners contend that this estate became fixed and vested in each of these joint tenants when the estate was created, at a time when there was no federal law for death taxes upon the value of joint estates, and that the subsequently adopted statute could not reach it.

While much of what was said in the Emery case has bearing here, this precise question was not there present. It seems to us that the holding of the Supreme Court in *Tyler* v. *United States,* 281 U. S. 486, is here controlling. Involved in that case were death taxes maturing on the value of joint estates passing to the survivor on the death of a joint cotenant or tenant by the entirety. The tenancies there were

created during the time the taxing law was in force. Marginal note 1 is an applicable quotation from the opinion.

NOTE 1. "Death duties rest upon the principle that death is the 'generating source' from which the authority to impose such taxes takes its being, and 'it is the power to transmit or the transmission or receipt of property by death which is the subject levied upon by all death duties.' *Knowlton* v. *Moore*, 178 U. S. 41, 56, 57. But mere names and definitions, however important as aids to understanding, do not conclude the lawmaker, who is free to ignore them and adopt his own. *Karnuth* v. *United States*, 279 U. S. 231, 242. A tax laid upon the happening of an event, as distinguished from its tangible fruits, is an indirect tax which Congress, in respect of some events not necessary now to be described more definitely, undoubtedly may impose. If the event is death and the result which is made the occasion of the tax is the bringing into being or the enlargement of property rights, and Congress chooses to treat the tax imposed upon that result as a death duty, even though, strictly, in the absence of an expression of the legislative will, it might not thus be denominated, there is nothing in the Constitution which stands in the way.

"The question here, then, is, not whether there has been, in the strict sense of that word, a 'transfer' of the property by the death of the decedent, or a receipt of it by right of succession, but whether the death has brought into being or ripened for the survivor, property rights of such character as to make appropriate the imposition of a tax upon that result (which Congress may call a transfer tax, a death duty or anything else it sees fit), to be measured, in whole or in part, by the value of such rights.

"According to the amiable fiction of the common law, adhered to in Pennsylvania and Maryland, husband and wife are but one person, and the point made is, that by the death of one party to this unit no interest in property held by them as tenants by the entirety passes to the other. This view, when applied to a taxing act, seems quite unsubstantial. The power of taxation is a fundamental and imperious necessity of all government, not to be restricted by mere legal fictions. Whether that power has been properly exercised in the present instance must be determined by the actual results brought about by the death, rather than by a consideration of the artificial rules which delimit the title, rights and powers of tenants by the entirety at common law. See *Nicol* v. *Ames*, 173 U. S. 509, 516; *Saltonstall* v. *Saltonstall*, *supra*, p. 271.

"Taxation, as it many times has been said, is eminently practical, and a practical mind, considering results, would have some difficulty in accepting the conclusion that the death of one of the tenants in each of these cases did not have the effect of passing to the survivor substantial rights, in respect of the property, theretofore never enjoyed by such survivor. Before the death of the husband (to take the Tyler case, No. 428,) the wife had the right to possess and use the whole property, but so, also; had her husband; she could not dispose of the property except with her husband's concurrence; her rights were hedged about at all points by the equal rights of her husband. At his death, however, and because of it, she, for the first time, became entitled to exclusive possession, use and enjoyment: she ceased to hold the property subject to qualifications imposed by the law relating to tenancy by the entirety, and became entitled to hold any enjoy it absolutely as her own; and then, and then only, she acquired the power, not theretofore possessed, of disposing of the property by an exercise of her sole will. Thus the death of one of the parties to the tenancy became the 'generating source' of important and definite accessions to the property rights of the other. These circumstances, together with the fact, the existence of which the statute requires, that no part of the property originally had belonged to the wife, are sufficient, in our opinion, to make valid the inclusion of the property in the gross estate which forms the primary base for the measurement of the tax."

This seems to us to fix as the basis, for inclusion for taxation, so much of the joint property as augmented the estate of the survivor through the death of the co-tenant. It is our view that this must be determined as of the time of the death. If the law at that time authorized the taxation of the estate which passed by the death, it would be immaterial when the joint estate was first created—whether before or after the enactment of the taxing statute.[2]

If at the time of the death "the practical mind" would conclude "that the death of one of the tenants" did then "have the effect of passing to the survivor substantial rights, in respect of the property, theretofore never enjoyed by such "survivor," it would follow that the death was "the generating source" of these accessions, and the taxing statute in force at the death would apply.

The Board, evidently assuming that for purposes of taxation the same practical mind would consider that half of the joint estate vested in the deceased at the time of its creation, fixed the value of the accession to the property rights of the surviving tenant through the death at half the value of the entire joint estate, and this appeal relates only to the inclusion of the half for taxation. There is no question here as to the taxability of the other half. We conclude that the order of the Board of Tax Appeals must be and it is

AFFIRMED.

Endorsed: Filed Nov. 26, 1932. Frederick G. Campbell, Clerk.

And on the same day, to-wit: On the twenty-sixth day of November, 1932, the following further proceedings were had and entered of record, to-wit:

NOTE 2. See *Gwinn* v. *Commissioner*, ... U. S. ....., Decided Dec. 5, 1932.

Saturday, November 26, 1932.

Court met pursuant to adjournment and was opened by proclamation.

Present:

Hon. Samuel Alschuler, Circuit Judge, presiding.
Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Frederick G. Campbell, Clerk.
Henry C. W. Laubenheimer, Marshal.

Before:

Hon. Samuel Alschuler, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Hon. James H. Wilkerson, District Judge.

Harold T. Griswold, W. W. S. Carpenter and Laird Bell, Executors of the Estate of William H. Redington, Deceased,
4719 *vs.*
Commissioner of Internal Revenue

Petition for Review of Order of the United States Board of Tax Appeals.

This cause came on to be heard on the transcript of the record from the United States Board of Tax Appeals and was argued by counsel.

On consideration whereof: It is now here ordered and adjudged by this court that the decision entered in this cause on June 11, 1931, by the United States Board of Tax Appeals be, and the same is hereby affirmed.

And afterwards, to-wit: On the sixteenth day of December, 1932, there was filed in the office of the Clerk of this court a petition for a rehearing, which said petition for a rehearing is not copied here.

And afterwards, to-wit: On the twenty-eighth day of January, 1933, the following further proceedings were had and entered of record, to-wit:

Saturday, January 28, 1933.

Court met pursuant to adjournment and was opened by proclamation.

Present:

Hon. Samuel Alschuler, Circuit Judge, presiding.
Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Suarks, Circuit Judge.
Frederick G. Campbell, Clerk.
Henry C. W. Laubenheimer, Marshal.

Before:

Hon. Samuel Alschuler, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Hon. James H. Wilkerson, District Judge.

Harold T. Griswold, *et al.*, etc.
4719 *vs.*
Commissioner of Internal Revenue

Petition for Review of Order of the United States Board of Tax Appeals.

It is ordered by the court that the petition for rehearing in this cause be, and the same is hereby denied.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 27 to 39, inclusive, contain a true copy of the proceedings had and papers filed (excepting briefs of counsel, and stipulations, and orders relating to the filing of briefs, and the petition for rehearing) in the case of

Harold T. Griswold, *et al.*, etc.,
Petitioner,

vs.

Commissioner of Internal Revenue,
Respondent,

No. 4719, October Term, 1932, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 6th day of April, A. D. 1933.

FREDERICK G. CAMPBELL,
(Seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 29, 1933

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.